



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/152967

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 18, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly denied Petitioner's application for FoodShare benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Katherine May, HSPC Senior  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 18, 2013, the agency sent Petitioner a notice indicating that his application for FoodShare benefits was denied because he is over the program limits. In determining Petitioner's

eligibility, the agency considered Petitioner's household to be comprised of one person. (Exhibit 7; Testimony of Ms. May)

3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 18, 2013. (Exhibit 1)
4. Petitioner pays child support for his three children, in the amount of \$769 per month. (Exhibit 3; testimony of Petitioner)
5. Petitioner has visitation with his children from 6:00 p.m. Friday until Monday morning. The mother of Petitioner's children has the children all day Monday through Thursday and half of Friday. Petitioner has an additional 24 days of visitation throughout the year. (Exhibit 4)

### **DISCUSSION**

Petitioner did not contest the agency's calculation of his income. However, Petitioner asserts that the agency erred in its denial of his application for FoodShare benefits, because the agency did not include his three children on his case. It is the agency's contention that the children currently reside with their mother and as such, cannot be included on Petitioner's case.

The *FoodShare Wisconsin Handbook* states the following guidelines with respect to joint or shared physical custody of children:

#### **3.2.1.1 Joint or Shared Physical Custody of Children**

Children are included in the household where they **reside** when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. **If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated.** It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

...

**Only one parent can receive FS for a child.** If you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still cannot determine which food unit the child should be in, call the CARES call center.

*Emphasis added.*

Custody and placement are legal terms. Custody refers to decision making authority over the children. Placement refers to where the children live. In determining which parent may claim the children for FoodShare benefits, the agency must determine where the children live.

Per the Mediation Agreement provided by Petitioner, during the course of a normal week, the children are with their mother 4.5 days per week (Monday-Thursday and ½ of Friday). In addition, Petitioner pays child support. Based upon the foregoing, it is found that the mother of Petitioner's children has primary placement of the children and that they reside with her and visit with Petitioner. Thus, per *FSH 3.2.1.1* the children were correctly placed on their mother's FoodShare case and not Petitioner's.

Petitioner argues that when looking at the visitation schedule over the course of the year, he has 50% placement of the children and should therefore, be able to carry the children on his FoodShare case. However, Petitioner does not have 50% placement, even over the course of the year.

Placement of the children over the course of the entire year is:

2.5 days per week (1/2 Friday, all Saturday and all Sunday) x 52 weeks per year = 130 days

130 days + 24 days = 154 days.

There are 365 days a year. Half (50%) of 365 days is 182.5 days. 154 days is less than 182.5 days per year, so Petitioner has less than 50% placement over the course of the year.

Based upon the foregoing, it is found that the agency correctly denied Petitioner's request to place his children on his FoodShare case.

### **CONCLUSIONS OF LAW**

The agency correctly denied Petitioner's application for FoodShare benefits.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of November, 2013.

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 18, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability